

REMARKS/ARGUMENTS

STATUS OF THE CLAIMS

The Office Action dated October 13, 2004 has been received and its contents carefully considered. Claims 1, 3-9, 11-21 are pending. Claims 1, 3-9, 11-21 have been rejected. Claims 13, 20 and 21 have been amended.

Reconsideration and withdrawal of the outstanding rejections are requested in view of the following remarks.

CLAIM REJECTIONS – 35 U.S.C. § 102

Claims 1, 3-7, 9, 11 and 13-21 were rejected under 35 U.S.C. §102(e) as being anticipated by *Coile, et al.* (U.S. Patent No. 6,108,300). Without conceding the propriety of the rejection, independent claims 1, 13, 20 and 21 have been amended. It is respectfully submitted that *Coile, et al.* does not teach, *inter alia*, a method for providing backup server support comprising “in response to the booting of the first server: signaling, using a second signal, the monitor server address; and monitoring for a response to the second signal within a second time period” in combination with the additionally claimed features as recited in claim 1 and 21. It is also respectfully submitted that *Coile, et al.* do not teach, *inter alia*, a system for operating redundant computers comprising “ in response to the booting of the first server: signaling, using a second signal, the monitor server address; and monitoring for a response to the second signal within a second time period” in combination with the additionally claimed features as recited in claim 13 and similarly in claim 20.

Coile, et al. teach a method for transferring a network function from a primary network device to a backup network device. The scope of *Coile, et al.*'s disclosure is limited as it

pertains to the present invention. For example, the Examiner states that “the language in claim 16 of *Coile, et al.* line 3-5 discloses that the primary network device can become active if the primary network device is reset.” However, *Coile, et al.* is silent with regards to teaching additional steps in response to the booting of the first server, including, for example, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period as recited in claims 1, 13, 20 and 21 of the present invention.

For anticipation under 35 U.S.C. §102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02). Since each and every element, as set forth in the claim, is not found either expressly or inherently described as required by the M.P.E.P, *Coile, et al.* cannot be said to anticipate the present invention as claimed. Hence, withdrawal of the rejection is respectfully requested.

Claims 3-7, 9, and 11 depend ultimately from independent claim 1 and are patentable over the cited prior art for at least the same reasons as is claim 1.

Claims 14-19 depend from independent claim 13 and are patentable over the cited prior art for at least the same reasons as is claim 13.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Coile, et al.* in view of *Midgeley, et al.* (U.S. Patent No. 5,592,611). Claim 8 depends from independent claim 1. *Coile, et al.* fails to teach each and every element as set forth in claim as required by the M.P.E.P. as outlined above. *Midgeley, et al.* does not cure the deficiencies of *Coile, et al.* because, it, too, fails to teach in response to the booting of the first server: including, for example, signaling, using a second signal, the monitor server address, and monitoring for a

response to the second signal within a second time period as recited in claim 1 of the present invention.

In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re: Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re: Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970). Therefore, since the prior art lacks all the claimed features, *Coile, et al.*, alone or in combination with *Midgeley, et al.*, cannot be said to teach or suggest the present invention as claimed. Hence, withdrawal of the rejection is respectfully requested.

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Coile, et al.* in view of *Li, et al.* (U.S. Patent No. 5,473,599). Claim 12 depends from independent claim 1. *Coile, et al.* fails to teach each and every element as set forth in claim 1 as required by the M.P.E.P. as outlined above. *Li, et al.* does not cure the deficiencies of *Coile, et al.* because, it, too, does not teach in response to the booting of the first server: signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period as recited in claim 1 of the present invention. Therefore, since the prior art lacks all the claimed features, *Coile, et al.*, alone, or in combination with *Li, et al.* cannot be said to teach or suggest the present invention as claimed. Hence, withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. If it is believed that the application is not in condition for allowance the Examiner is requested to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Marc W. Butler', with a stylized flourish at the end.

Marc W. Butler
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Date: January 13, 2005

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